

Lower Skagit Watershed, WRIA 3

This focus sheet provides information on the availability of water for new uses in the Lower Skagit Watershed. This information provides a starting point for potential water users in determining the best strategies for securing water for a future project or proposal in this area.

The Lower Skagit Watershed, also known as Water Resource Inventory Area 3 (WRIA 3), is situated in the northern part of Puget Sound east of the San Juan Islands. It comprises the western part of Skagit County and small portions of Snohomish and Whatcom Counties. Fidalgo, Guemes, Cypress and other smaller offshore islands are also included in the WRIA 3 watershed.

In addition to the Skagit River and its delta, the watershed includes Lake Samish and the Samish River watersheds. These watersheds are not subject to the instream flows set for the Skagit River and its various smaller tributary streams, such as Fisher, Carpenter, Jones and Day Creeks.

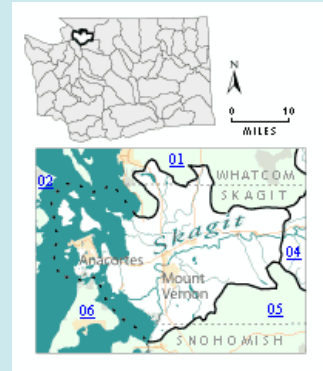
Water from the Skagit River basin supports a robust agricultural economy, hydroelectric generation and growing cities and towns. The Skagit River is the only large river system in Washington that contains healthy populations of all five native salmon species. To preserve these fish runs, the state has set instream flows to protect and preserve water flow in the river and its tributaries.

Yearly precipitation ranges from as little as 15-20 inches in the coastal area to over 70 inches in the Cultus Mountains. Most of this precipitation arrives during the winter months when water demand is low. Demand for water is high during the summer months when stream flows are naturally low due to little precipitation. Stream flows, especially in tributary creeks, are dependent on groundwater. This means that groundwater and surface water are least available when water demands are the highest.

Factors affecting water availability

Instream Resources Protection Program rule

Much of the water in the Lower Skagit Watershed is already legally spoken for. Increasing demands for water from population growth,



Definitions

Consumptive use: A use of water that diminishes the quantity or quality of water in the water source.

Instream flow rule: Establishes a water right for streams in a particular watershed. The rule specifies the amount of water needed in a particular place for a defined time for each stream. Typical instream flow rules now include broader water management strategies.

Mitigation plan: A scientifically-sound plan intended to avoid impairment to existing water rights or capturing water from a closed source.

Non-consumptive use: A use of water that does not diminish the quantity of water in the water source, such as power generation.

Permit-exempt well: The state Ground Water Code allows for certain uses of small quantities of groundwater without obtaining a permit from Ecology. (RCW 90.44.050)

Reservation: A reservation of water is a one-time finite amount of water set aside for specific future uses. Reservations typically provide year-round water and have conditions of use required to access them.

declining groundwater levels in some areas, and the impacts of climate change have added to the challenge of finding water for new uses in WRIA 3. The Lower Skagit Watershed lacks water when and where it is needed, particularly during the summer months.

WRIA 3 has an Instream Resources Protection Program rule (WAC 173-503), often referred to as the Skagit instream flow rule. It was effective on April 14, 2001, to protect senior water rights and maintain a healthy ecosystem. Such rules are required by state law (RCW 90.54). This rule applies only to the Skagit River and its tributaries. It does not apply to the Samish River basin or Fidalgo, Cypress, Guemes, Hope and Goat Islands.

An instream flow rule is essentially a water right for the river. Once the rule is established, all water uses established after the rule are interruptible. Instream flows in the Skagit River are not met on average 100 days out of the year. Stream flows fall below the instream flow levels during some days of almost every month of the year, but the low-flow periods are most concentrated during the end of the dry season in late summer and early fall.

Interruptible water right: A water right that is junior in priority to other water rights, including instream flow levels. The water use can be forced to shut off until senior water rights are fulfilled. An interruptible water right generally cannot be used for uses requiring a continuous water supply, such as domestic water use.

Reservations created in 2006 amendment; Supreme Court overturns in 2013

Ecology revised the Skagit River Instream Flow Rule in 2006 to establish finite “reservations” of surface and groundwater for future out-of-stream uses. The reservations provided uninterruptible water supplies for future water users that could be legally used even if flows in the Skagit River fell below the regulatory flow levels. The water reserves were divided among 25 different tributaries and stretches of the Skagit River.

On Oct. 3, 2013, the Washington State Supreme Court ruled that Ecology exceeded its authority to create reservations through rulemaking where water was set aside to support stream flows for fish. As a result of the Court’s decision, all water uses established after April 14, 2001 in the Skagit River basin and its tributaries are junior to the instream flows and are subject to curtailment when instream flow levels are not met. All new water uses requiring a continuous and reliable source of water, including permit-exempt wells, must be mitigated to prevent impairment of the instream flows.

For more information, see Ecology publication #13-11-006: “Frequently Asked Questions: Water Availability for Skagit basin landowners”; online at:

<https://fortress.wa.gov/ecy/publications/publications/1311006.pdf>

Indian Tribe Reservations

The Swinomish Indian Reservation and Upper Skagit Reservation lands are located within WRIA 3. Federally- reserved rights are not quantified at this time and therefore the legal availability of water in these areas is undetermined.

Wild and Scenic Rivers

The Skagit River and the Cascade, Sauk, and Suiattle tributaries are designated as Wild and Scenic Rivers

by the [U.S. Wild and Scenic Rivers Act \(16 USC 1271-1287\)](#). Any water withdrawals that would interrupt the free flowing condition of these rivers, such as run-of-the-river hydropower projects, would not be approved.

Coastal areas of Puget Sound

Any proposed water withdrawals in the coastal areas of Puget Sound are evaluated for the risk of seawater intrusion into fresh groundwater supplies. Coastal applicants may need to develop an adequate mitigation plan to address the risk of seawater intrusion. Guemes Island has experienced significant seawater intrusion along its northern coast and in limited areas of its southern coast.

Samish River basin

As stated earlier, WAC 173-503 does not include the Samish River basin. At this time it is not known whether water is available for future uses in this area. The Department of Fish and Wildlife has recommended closing much of the basin to new consumptive water uses.

Water currently available for new uses

Water for non-consumptive uses (such as power generation) and **water uses that can be interruptible** may be approved, subject to interruption during low flows of the Skagit River and designated tributaries.

Working towards water solutions in the Skagit Watershed

Ecology and the state legislature recognize that water is needed to support homes, farms and businesses in the Skagit River Watershed. In April 2012, the Washington state Legislature provided funding to Ecology to develop mitigation programs that balance instream and out-of-stream benefits in the Skagit. This is much like the agency has been doing with the successful Office of Columbia River Program in eastern Washington.

Ecology is working on mitigation projects and programs that will provide legally-secure water supplies for existing and future water uses in the Skagit River basin while protecting instream flows. Projects in development include purchase of senior water rights that can be reallocated to out-of-stream and instream uses, and stream flow enhancement through timed releases of water. Ecology is working with local government and tribal leaders, landowners and other stakeholders to determine the best and most cost-effective package of actions to address both instream and out-of-stream needs.

For more information see the Skagit Water Solutions web page:

<http://www.ecy.wa.gov/programs/wr/nwro/skagit-wtrsolut.html>

Additional options for obtaining water

Skagit basin landowners who wish to use a well -- but did not establish use of a well before the April 14, 2001 effective date of the Skagit Instream Flow Rule -- have several options they can pursue. The availability of the following options will vary based on location and other factors:

- Hook up to the Skagit PUD or another local public water system.
- Acquire and transfer a senior water right within the same basin as your proposed project.

- Develop a rainwater catchment system or obtain a trucked water supply to serve your domestic or commercial needs.
- Mitigate: landowners can develop an individual mitigation proposal, or wait for Ecology to establish basin-wide mitigation options.

Pending water right applications in this watershed

At this time, Ecology is not processing any new water right applications and is focusing on developing mitigation programs in the Skagit basin. However, landowners who wish to acquire a water right can still submit an application with Ecology.

Washington water law is based on the “prior appropriation” system, often called “first in time, first in right.” Applications for water from the same source must be processed in the order they are received. (There are certain exceptions, see “Additional options for processing water right applications”.)

Ecology asks anyone who needs a water right (new, change, or transfer) to submit the pre-application consultation form and meet with us to review your water supply needs and project proposal.

- [Apply for a New Water Right](#)
- [Apply to Change or Transfer a Water Right or Claim](#)

The map on the last page shows some of the factors that will be considered when evaluating water right permit applications. Here are some additional information sources to assist you with your research:

- [Locate and research water rights on land parcels anywhere in the state](#) (Water Resource Explorer)
- [Pending Water Right Applications by County](#)
- [Subscribe to a water right application RSS feed for a county or WRIA](#)
- [WRIA map showing the total number of water right claims, certificates, permits and applications](#)
- [Search and view well reports using a map or text search tools](#) (WA State Well Log Viewer)

For more information

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Bellevue WA 98008
425-649-7000

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Skagit Instream Flow Rule: Affected Areas and Water Availability

